



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0298]

New Entrant Safety Assurance Program Operational Test

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces an operational test of procedural changes to the New Entrant Safety Assurance Program. The operational test began in July 2013 and will be in effect for up to 12 months. It is applicable to new entrant motor carriers domiciled in the States of California, Florida, Illinois, Montana, New York and the Canadian Provinces contiguous to Montana and New York. The operational test procedures allow FMCSA to complete an off-site safety audit of eligible new entrant motor carriers that can demonstrate basic safety management controls by submitting compliance documentation as requested by FMCSA. The purpose of the operational test is to compare off-site and on-site new entrant safety audits in terms of resource allocation and subsequent safety performance of new entrant motor carriers.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, telephone: (412) 395-4816, email: bryan.price@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 210(a) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106-159, 113 Stat. 1748, December 9, 1999] (MCSIA), mandates that the Secretary of

Transportation establish regulations to require each motor carrier owner and operator granted new operating authority registration to undergo a safety review within 18 months of starting interstate operations. [49 U.S.C. 31144(g)]. In issuing these regulations, the Secretary was required to: (1) establish the elements of the safety review, including basic safety management controls; (2) consider their effects on small businesses; and (3) consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.

In response to the statutory mandate in MCSIA, FMCSA published an interim final rule titled, “New Entrant Safety Assurance Process” on May 13, 2002 (67 FR 31978), which became effective January 1, 2003. Subpart D of 49 CFR part 385 requires a safety audit within 18 months after a new entrant motor carrier begins operations to determine if the carrier is exercising basic safety management controls. On December 16, 2008 (73 FR 76472), the regulations were strengthened to raise the standard for passing a new entrant safety audit and to establish procedures for expedited action if certain violations are discovered during a roadside inspection while a motor carrier is in the new entrant program.

The 2008 final rule required compliance beginning on December 16, 2009. These strengthened regulations maintained the requirement to conduct a safety audit within 18 months of beginning interstate operations. By policy, FMCSA has also implemented more stringent safety audit completion deadlines for new entrant passenger carriers, requiring that they receive a safety audit within 9 months of beginning interstate operations.

Congress significantly tightened the deadlines for completion of new entrant safety audits. Section 32102 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112-141, 126 Stat. 778 (July 6, 2012)] requires new entrant motor carriers to “undergo a safety review not later than 12 months” after beginning interstate operations, and within 120 days for certain passenger carriers [49 U.S.C. 31144(g)(1)]. Section 32102 has an effective date of October 1, 2013.

Need for a More Efficient New Entrant Safety Assurance Process

Under the current New Entrant Safety Assurance Program, approximately 34,000 safety audits are conducted annually. Significant FMCSA resources are required to travel to each motor carrier’s principal place of business to conduct these safety audits. As presented in the table below, the vast majority of the safety audits have been completed within the 18-month statutory guideline previously established by Congress. However, the number of new entrant motor carriers entering the program continues to grow each year and FMCSA’s ability to complete all new entrant safety audits is significantly impacted by the more stringent MAP-21 deadlines.

The table below (<http://www.fmcsa.dot.gov/facts-research/art-safety-progress-report.htm>) also indicates that approximately 70 percent of new entrant motor carriers pass their safety audit each year by demonstrating basic safety management controls in the areas of driver qualifications, hours of service, vehicle maintenance, accident register, and controlled substances and alcohol use and testing. Unless roadside inspection results have indicated evidence of a violation requiring expedited action as described in 49 CFR 385.308, or a pattern of poor inspections severe enough to place the carrier in the high-risk category, the primary consideration for prioritizing safety audits is the number

of months since the new entrant motor carrier received its USDOT Number. The Agency currently devotes the same resources in travel costs and staff time to on-site reviews of low-risk and higher-risk new entrant motor carriers.

The FMCSA believes there are opportunities to increase efficiency within the New Entrant Safety Assurance Program in a manner that will enhance safety and improve the Agency's ability to meet the more stringent MAP-21 safety audit deadlines.

	FY 2010	FY 2011	FY 2012
New Entrant Safety Audits Conducted	34,140	34,276	34,349
Percentage of New Entrants That Pass the Safety Audit	72.6%	65.0 %	74.1%
Percentage of New Entrant Safety Audits Completed within Statutory/Policy Timeframes	92.5%	87.2%	88.3%

Operational Test of Procedural Changes

FMCSA began the operational test of procedural changes to the New Entrant Safety Assurance Program in July 2013. These alternate procedures apply to new entrant motor carriers domiciled in the States of California, Florida, Illinois, Montana, and New York. In addition, FMCSA staff based in Montana and New York are using these procedures to conduct safety audits on the Canadian new entrant motor carriers domiciled in the Provinces contiguous to their States. There will be no regulatory relief provided during the operational test, and the test is being carried out in accordance with existing regulations in subpart D of 49 CFR part 385.

During the test, certain motor carriers are automatically flagged for an on-site new entrant safety audit at their principal place of business, as is current practice. These motor carriers include: passenger carriers, carriers with evidence of roadside inspection activity

while transporting a placardable quantity of hazardous materials; motor carriers with one or more Safety Measurement System (SMS) Behavior Analysis and Safety Improvement Category (BASIC) measurement above FMCSA's intervention threshold; and motor carriers with evidence of an expedited action violation as described in 49 CFR 385.308.

All other new entrant motor carriers will be contacted by letter and asked to electronically submit legible copies of documentation to a new entrant safety audit website (<http://ai.fmcsa.dot.gov/newentrant>). The requested documentation allows FMCSA to initiate the safety audit process remotely off-site through verification of compliance with basic safety management controls related to driver qualification, driver duty status, vehicle maintenance, the accident register, and controlled substances and alcohol use and testing consistent with 49 CFR 385.311.

The letter describes requested documents and explains that submission of these documents preclude the need for a safety audit at the new entrant carrier's place of business. In addition, the letter explains that failure to submit the requested documentation or failure to respond to the letter will be treated as a refusal to undergo a safety audit and could constitute a failure to permit the safety audit in accordance with 49 CFR 385.337(b), which could result in revocation of the carrier's registration and issuance of an order prohibiting interstate operations. Carriers who are unable to submit the requested documentation may submit an explanation in writing to FMCSA within 10 days from the service date of FMCSA's request.

A new entrant safety auditor subsequently reviews the submitted documentation and either:

- (1) Prepares a report to document that the motor carrier has passed the new entrant safety audit;
- (2) Contacts the motor carrier to request additional documentation; or
- (3) Schedules a safety audit at the motor carrier's principal place of business as soon as practicable, based upon violations observed in the submitted documentation.

FMCSA believes that these test procedures will more efficiently verify the safety status of new entrant carriers, resulting and allow the Agency to better utilize its resources for on-site safety audits of higher-risk (e.g., passenger and HM) carriers, and carriers that are non-compliant. The test procedure will also provide a more effective process for those unable or unwilling to provide the requested documents. These test procedures will help the Agency meet the MAP-21 safety audit deadlines.

This table shows how the new entrant operational test differs from the current new entrant safety audit process:

New Entrant (NE) Safety Assurance Program Today	New Entrant (NE) Safety Assurance Program Operational Test Process
<p>Carrier Enters NE Program</p> <p>↓</p> <p>Roadside performance data monitored for Expedited Action violations</p> <p>↓</p> <p>All carriers receive a NE safety audit at their principal place of business, generally prioritized by program entry date</p>	<p>Carrier Enters NE Program</p> <p>↓</p> <p>Roadside performance data monitored for Expedited Action violations</p> <p>↓</p> <p>Higher risk carriers, to include passenger and HM carriers, (and carriers demonstrating poor performance through SMS BASICS or expedited action violations, are automatically prioritized for a NE safety audit at their principal place of business</p> <p>↓</p> <p>Eligible carriers receive earlier off-site safety audit and verification of safety management controls through document submission</p> <p>↓</p> <p>Carriers unable to demonstrate adequate safety management controls through submitted documents will receive an on-site safety audit.</p>

Test Metrics

FMCSA will monitor and evaluate the effectiveness, efficiency, innovation, and flexibility of the operational test procedures in contrast to the current new entrant safety assurance program during and after the test through examination of several performance metrics. The metrics may include but are not limited to:

Effectiveness Metrics

- Crash rates
- Roadside inspection violation and out-of-service (OOS) rates
- Motor carrier SMS scores
- Expedited Action violation rates
- Safety audit failure rates and number of processed corrective action plans (CAPs) submitted by carriers following failed safety audits

Efficiency Metrics

- Total safety audits performed
- Time elapsed between entry into the new entrant program and completion of a safety audit
- Time required to conduct a safety audit
- Number and percentage of past-due safety audits
- Total travel costs
- Total travel time

Innovation Metrics

- New entrant website use

- Ease of document submission as determined by the number and percentage of carriers that submit documentation electronically

Flexibility Metrics

- Number and percentage of safety audits that had to be converted to the motor carrier's principal place of business
- Reason for conversion to a safety audit at the motor carrier's principal place of business.

Issued on: August 27, 2013

Anne S. Ferro
Administrator

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